IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 44 of 1990

HEM RAJ

V/S

LAXMI NARAIN

Mr. DR BHANDARI, for the appellant / petitioner

Mr. BASANT RAJ MEHTA, for the respondent

Date of Order : 2.1.2007

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

This appeal has been filed by the defendant, against the judgment and decree of the two learned courts below decreeing the plaintiff's suit for eviction.

At the outset it may be observed that the place where the premises are located, the provisions of Rent Control Laws are not applicable, and therefore, the suit was filed by only terminating the tenancy.

The case of the plaintiff, as pleaded in the plaint is, that the defendants were inducted as tenant under rent note dt. 9.6.1963, and since the defendant did not comply with the terms of the rent note, vide registered notice dt. 23.7.1979 the tenancy was terminated, and the defendant was called upon to deliver vacant possession upto

1.9.1979, but it was not done, therefore, the suit was filed, and arrears of rent were also claimed.

The defendants contested the suit, contending interalia that Banshilal willed away the property to the defendant no.2, and it was denied that the property was ever taken on rent, rather it was pleaded that since much before 9.6.1963, Banshilal was continuing in possession as owner, and execution of rent note was denied. Alternatively it was pleaded, that Banshilal never remained in possession as tenant, and never acknowledged the plaintiff to be the landlord. It was then pleaded that on 25.5.1966, the plaintiff got served a notice through their advocate Shri Purshottam Das terminating the tenancy w.e.f. 9.6.1966, and since then, the suit has not been filed within a period of limitation, as prescribed by Article 67 of the Limitation Act, the suit is not maintainable.

On this controversy about termination of tenancy in 1966, and the suit being not within limitation, issues no. 7 and 11 were framed.

The learned trial court held, that notice dt. 25.5.1966 Ex.A-2 was given, but then since the plaintiff had given another notice on 23.7.79, the tenancy continued, and then deciding issue no.11, also it was found, that the suit is within time, and significantly by deciding other

issues in favour of the plaintiff, the suit for eviction along with the arrears of rent was decreed.

In appeal it was found, that the tenancy was for an unlimited period, and notice Ex.A-2 was replied by Banshilal vide Ex.A-4, and since by that notice tenancy was terminated w.e.f. 9.6.1966, which notice was not received by the addressee before 15 days, from the date, on which the tenancy was determined, and therefore, it was found that the suit is within time. It was also considered, that vide Ex.A-4 the defendant denied the title of the landlord, and thereby the defendant incurred forfeiture of lease, which occurred for the first time on 10.6.1966. Then, it was again denied vide Ex.A-7 on 8.4.1970, and since the plaintiff could rely on last forfeiture, which was dated 8.4.1970, the suit filed within 12 years from that date cannot be said to be barred by time, and the decree was upheld.

This appeal was admitted vide order dt. 20.4.2000, a very long detailed order, running into five typed pages, discussing all points, and appeal was admitted by framing following substantial question of law:-

> "Whether the learned Additional District Judge was not right in holding that there was second forfeiture and the limitation started from 8.4.1970 (the date of application Ex.A-7 written by deceased Bansilal to Municipality) and in case it is held finally that the

> period of limitation cannot start from 8.4.1970, the suit of the plaintiffs respondents would certainly be time barred and if started from 8.4.1970, the suit would be within limitation?"

Arguing the appeal, it was contended by the learned counsel for the appellant that vide Ex.A-2, the tenancy had already been terminated by the plaintiff, and the appellant had reacted to that notice vide Ex.A-4, and thereby had denied the title of the plaintiff, and asserted his own right in the property. In that view of the matter, in view of the provisions of Article 67 of the Limitation Act, the suit could be filed, only within period of 12 years, from that date i.e. date of Ex.A-2, and that having not been done, the learned courts below were in error in decreeing the suit, despite being barred by time.

Learned counsel for the respondent, on the other hand, supported the impugned judgments, and relied upon judgment of Andhra Pradesh High Court, in Karumanchi Varalakshmamma Vs. Karumanchi Veeraraghavamma, reported in AIR 1960 A.P.-166, to contend, that where there are successive forfeitures, it is open to the landlord to rest his claim for recovery of the possession, on the foot of forfeiture on the latest act of denial of title, or the breach of the conditions of the lease.

I have considered the submissions, and have gone

through the record.

It is not in dispute, that notice Ex.A-2 was given on behalf of the plaintiff, and a reading of this notice Ex.A-2 does clearly show, that thereby the plaintiff clearly determined the tenancy, by calling upon the appellant to deliver vacant possession to the plaintiff along with arrears of rent, and in the event of failure the suit will be filed at the defendant's costs and risks. Then, vide Ex.A-4 dt. 10.6.66 the appellant clearly reacted, by contending, that the property neither belongs to the plaintiff, nor is in the tenancy of the defendant, rather the defendant is continuing in exclusive possession, peacefully, for the last 40 years, and thus the plaintiff was called upon to desist from initiating any judicial proceedings. This Ex.A-4 was received on behalf of the plaintiff vide Ex.A-3.

In my view, forfeiture is one of the modes of the determination of lease, while determination of lease by the plaintiff, expressly by notice Ex.A-2, is a different thing altogether. In that background, a look at Article 67 of the Limitation Act clearly shows, that it clearly prescribes the limitation of 12 years, to commence from the time when the tenancy is determined. It is not in dispute, that vide Ex.A-2 the tenancy was determined.

True it is that Ex.A-2 is not 15 days' notice, as contemplated by Section 106, and in the totality of circumstances also it does not appear, that 15 days time had elapsed between the date of receipt of notice Ex.A-2 by the appellant, and the dates of determination of tenancy, stipulated therein. But then, the learned counsel for the respondent on the last dates of hearing was pointedly put a query, as to whether, to get out of the wrath of Article 67, valid determination of tenancy in accordance with the provisions of Section 106 of the Transfer of Property Act is a sine qua non, or not, obviously because, if it is not so, then since the plaintiff did purport to determine the tenancy, Article 67 gets attracted. It is altogether additional different thing, that the appellant immediately reacted vide Ex.A-4, and set up title in himself. It may be observed here, that the learned counsel for the respondent could not point out any legal authority to support the proposition, that for attracting bar of Article 67 of the Limitation Act, a valid notice as required by Section 106 of the Transfer of Property Act is a condition precedent. In that view of the matter, in my view, as I presently stand advised, on the basis of Ex.A-2 the suit filed on 12.11.79 is clearly barred by time in view of the provisions of Article 67 of the Limitation Act, and the learned courts below were in error in deciding this issue in favour of the plaintiff.

The net result is, that the appeal is allowed, the impugned judgments and decrees are set aside, and the suit of the plaintiff is dismissed. The parties shall bear their own costs throughout.

(N P GUPTA),J.

/Sushil/